

MORASH, MELANIE

From: Salyer, Kathleen
Sent: Friday, December 13, 2013 11:17 AM
To: Roe, Christopher M.
Cc: Manzanilla, Enrique; MORASH, MELANIE; Shaffer, Caleb; shill@waterboards.ca.gov; Estrada, Thelma; Minor, Dustin; Papler, Roger@Waterboards (Roger.Papler@waterboards.ca.gov); Morris, Jennifer; Scurlock, Diane A; Paschke, Paul E; 'Alan Palter' (Alan.Palter@varian.com) (Alan.Palter@varian.com); John Buchanan; Kathleen Goodhart (kgoodhart@cooley.com) (kgoodhart@cooley.com); Mark Becker (Mark.Becker@stantec.com); DIAZ, ALEJANDRO; Rosen, Vicki
Subject: RE: Hewlett Packard & Varian Palo Alto Site Follow-up Meeting

Dear Chris,

The new community relations manager for the South Bay will be Alejandro Diaz. Alejandro is very experienced in community involvement for vapor intrusion investigations in his role at the MEW site; and we are confident in Alejandro's ability to successfully interact with residents. Alejandro is already working with Vicki on the transition in preparation for cold weather sampling.

Regarding your first request to have a meeting to plan for the January work, please have Paul coordinate with Melanie directly on any investigation planning work. As we've historically done, we are always willing to have planning meetings whenever needed, and requests to do so don't need to be made to me.

I have discussed with Enrique your second request to have another large meeting with Enrique. Enrique prefers that site issues are attempted to be resolved at the team level before meetings are scheduled with him. In this case he has suggested a meeting occur at my level in January and we can determine then if a meeting with Enrique is warranted. We are looking forward to working with you and your team on the additional vapor intrusion investigation work.

Regards,

Kathleen Salyer
 Assistant Director
 Superfund Division
 CA Site Cleanup Branch
 U.S. Environmental Protection Agency Region IX
 (415) 972-3267
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From: Roe, Christopher M. <CRoe@foxrothschild.com>
Sent: Tuesday, December 10, 2013 10:21 AM
To: Salyer, Kathleen
Cc: Manzanilla, Enrique; MORASH, MELANIE; Shaffer, Caleb; shill@waterboards.ca.gov; Estrada, Thelma; Minor, Dustin; Papler, Roger@Waterboards (Roger.Papler@waterboards.ca.gov); Morris, Jennifer; Scurlock, Diane A; Paschke, Paul E; 'Alan Palter' (Alan.Palter@varian.com) (Alan.Palter@varian.com); John Buchanan; Kathleen Goodhart (kgoodhart@cooley.com) (kgoodhart@cooley.com); Mark Becker (Mark.Becker@stantec.com)
Subject: RE: Hewlett Packard & Varian Palo Alto Site Follow-up Meeting

Kathleen,

First, let me state that HP's and Varian's intent is to perform work in January and February consistent with your email to me. We will do our best to revise the work plan to reflect this by the December 13 deadline that was communicated to us on December 6. We trust that this will address your most immediate concern. As you may know, HP and Varian have worked cooperatively with EPA and the Water Board on this site for decades.

The Region's commitment to proceed quickly with its newly developed, standardized approach to vapor intrusion investigations is clear. However, we are not confident that the Region is proceeding with the prudence that testing of the indoor air of homes and businesses warrants.

We are particularly concerned that EPA may not be prepared to appropriately interact with residents and answer the questions we expect EPA's new thinking and change of course on our investigation will generate. Your community relations manager and project manager did a very good job in Palo Alto in 2012, but we understand that that community relations manager may not be available now. Please let us know who the new manager will be so that our communications folks can reach out to him or her as they did with Vicki. We are concerned that pursuing this new strategy in the homes and businesses of our community and at other sites in the South Bay Area will generate more concern than EPA may anticipate. An ill-conceived communications approach could generate unnecessary fear and make completion of the work ahead more difficult.

In response to your email, we want to provide some clarity around how our study has progressed so far. As you know, the OSWER External Review Draft Guidance document you refer to was not available for the companies to review in September 2010, when EPA and the Water Board issued the 15 year review, or later, when Region 9 directed that a vapor intrusion investigation be conducted within the 50 ppb and 100 ppb TCE groundwater contours in Palo Alto. EPA and the Water Board provided HP and Varian with work plans on which to model our own. EPA and the Water Board provided significant input to our Work Plan and approved it in February 2012. In addition, EPA participated directly in our execution of the work of testing residential buildings (Matt Salazar and Vicki Rosen went door to door to request access from the homeowners and to discuss the purpose and nature of the study) and, based on the results gathered in implementing the approved work plan, EPA concluded that no further sampling was needed in the homes. EPA communicated that conclusion in writing to the homeowners, residents and the City in 2012.

Given your office's direction and involvement, your email correctly notes that there is some confusion, especially with regard to the statement in your email that "these data gaps are not new requirements." EPA identified no data gaps or missing items in our Work Plan or in the letters sent to homeowners by EPA in December 2012 that stated:

Trichloroethylene (TCE) was not detected in your home. Please see the attached chart for the results. The indoor air sampling results from the 12 residences sampled in the area, including your home, indicate that vapor intrusion from subsurface groundwater does not appear to be occurring. Therefore, no additional air sampling is recommended at your home.

Dec. 13, 2012 Letter to individual residents from Matt Salazar, P.E., USEPA Remedial Project Manager.

In fairness to all involved, EPA has changed its thinking, at least as to our project.

Your email asserts that the Region's new approach is consistent with the External Review Draft Guidance document under review by EPA headquarters. We note that OSWER put its document out for public comment, received substantial comment, and, apparently, still has not determined what changes it may make to the draft. Region 9 has decided not to wait for OSWER's determinations or for national short term actions levels for TCE. Our primary concern about all of this is the lack of certainty this creates. In our community, EPA is reversing what it told residents less than a year ago about their homes, and it is doing this without having taken any step to embody its newest thinking in formal guidance or to wait for national guidance that is well underway. The risk seems real to us that EPA's thinking will continue to change through the course of this investigation.

As to commercial buildings, your team is aware that we have been ready since April 2013 to restart our sampling efforts, including sampling with HVAC systems off, after having sampled one building, 395 Page Mill Road with the HVAC off in March 2013. As we repeatedly made clear, we have been waiting only for EPA to put its new short term action levels for

TCE in writing so that we could appropriately communicate with the building owners about the standards and negotiate access.

As you might imagine, we did not expect and were surprised to receive the formal letters, both of which identify our site, issued by the Region to the Water Board while we were still in active dialogue with your office. One of the letters was dated more than a week before we received it from the Water Board (with extensive recommendations for revision of our work plan), and the second was posted publicly on the EPA website at or before the time we were even told of its existence.

We are working to revise the Work Plan addendum as quickly as we can to meet Region 9's expectation that we move forward on ~~allow the~~ January and February sampling. But we do request two things occur in parallel:

1. A meeting, including communications professionals, as soon as possible to talk through the communications that will be need to be ready for the January work.
2. A follow up meeting with the Division Director Manzanilla and yourself and the project team in January to explore whether there is a more constructive and cooperative basis on which we can move forward together on this important project.

Respectfully,

Chris

Christopher Roe

Partner

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From: Salyer, Kathleen [<mailto:Salyer.Kathleen@epa.gov>]

Sent: Tuesday, December 03, 2013 7:07 PM

To: Roe, Christopher M.

Cc: Manzanilla, Enrique; MORASH, MELANIE; Shaffer, Caleb; shill@waterboards.ca.gov; Estrada, Thelma; Minor, Dustin; Papler, Roger@Waterboards (Roger.Papler@waterboards.ca.gov); Morris, Jennifer; Scurlock, Diane A; Paschke, Paul E; 'Alan Palter' (Alan.Palter@varian.com) (Alan.Palter@varian.com); John Buchanan; Kathleen Goodhart (kgoodhart@cooley.com) (kgoodhart@cooley.com); Mark Becker (Mark.Becker@stantec.com).

Subject: RE: Hewlett Packard & Varian Palo Alto Site Follow-up Meeting

Dear Chris,

EPA appreciates the vapor intrusion work activities that HP and Varian have conducted to date at the HP Site in Palo Alto. However, EPA would like to address certain issues that you have raised with us in recent phone calls and meetings.

EPA would like to be clear that, while good progress has been made, a complete data set has not yet been obtained for the purposes of evaluating the subsurface-to-indoor air vapor intrusion pathway at the HP Site, consistent with the "multiple-lines-of-evidence" approach in EPA's 2013 Office of Solid Waste and Emergency Response (OSWER) *External*

In reviewing the multiple lines of evidence that have been collected for the HP Site, EPA Region 9 has identified data gaps that must be addressed to fully evaluate the potential for vapor intrusion into buildings overlying the HP Site groundwater contamination. We apologize if there is confusion surrounding this issue, however, these data gaps are not new requirements. Rather, the identified data gaps are based on standard vapor intrusion investigation protocols as recommended by EPA's national vapor intrusion guidance, and that EPA Region 9 has identified as missing from your February 17, 2012 Work Plan. For the residential investigations, these data gaps include the lack of multiple rounds of indoor air sampling, including during colder weather months, and crawlspaces or basement sampling, where obtainable.

For the next phase of sampling, EPA's preferred approach consists of sampling all those residential buildings identified in the original study area – overlying the original 50 microgram per liter ($\mu\text{g/L}$) shallow-zone TCE groundwater contour line. Given the short-time, EPA would consider as the next phase sampling at the twenty-one residential (single and multi-family) buildings that were previously sampled during the spring/summer 2012 sampling events. However, this sampling must include crawlspace and basement sampling. We also note that the HVAC-off commercial building testing has not yet been completed.

EPA would also like to clarify the phased approach we have suggested. This means initially addressing the buildings overlying the highest areas of concentration first. However, a full evaluation drawing on the multiple-lines-of-evidence approach, out to the off-property groundwater boundary line of 5 $\mu\text{g/L}$ for TCE in shallow zone groundwater will ultimately be expected. The use of the TCE 5 $\mu\text{g/L}$ groundwater concentration as defining the extent of the Vapor Intrusion Evaluation Study Area is reasonable, supported by use of EPA's vapor intrusion screening level calculator, the generic default groundwater-to-indoor air attenuation factor of 0.001 and the appropriate Henry's Law conversion, empirical data, and mathematical modeling. A comprehensive evaluation of the multiple lines of evidence collected for each property should be used in determining the potential for vapor intrusion at particular buildings and whether additional investigation and/or mitigation is warranted. Any proposal to exclude particular buildings from indoor air sampling must be supported by a robust, site- and building-specific multiple-lines-of-evidence analysis.

Regarding the short-term TCE action levels, you have indicated that you do not plan to conduct the proposed indoor air sampling until EPA has issued national guidance on the short term action levels. EPA finds this approach unacceptable. While we anticipate EPA guidance on national short-term action levels by the end of the calendar year, your investigation should not be contingent upon issuance of this guidance. The anticipated guidance will be specific to short-term actions levels and will not change the fundamentals of the vapor intrusion investigation that is underway or the long-term (10^{-6} excess lifetime cancer risk) screening levels.

Finally, while proceeding with the next rounds of sampling (colder weather residential and HVAC-off commercial), EPA will expect the HP/Varian team to begin development of the subsequent investigation phases that address vapor intrusion evaluations over the lower concentration areas of the groundwater plume, out to 5 $\mu\text{g/L}$ for TCE. We look forward to working with you on the vapor intrusion investigation at this site. Melanie Morash is available to answer your technical questions and can be reached (415) 972-3050. I am also happy to have another call or meeting if you feel that would be helpful.

Kathleen Salyer
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From: Roe, Christopher M. [<mailto:CRoe@foxrothschild.com>]

Sent: Monday, November 25, 2013 2:34 PM

To: Salyer, Kathleen

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Subject: Hewlett Packard & Varian Palo Alto Site Follow-up Meeting

Dear Kathleen:

We appreciate you and your team making time for the call on Friday afternoon. HP and Varian are committed to meeting EPA's expectations with regard to the timing of the next step of the investigation. We stand ready to perform the work as it is described in our proposed work plan addendum in January, assuming that there are national short-term TCE action levels by then.

We are surprised by the extent to which EPA proposes changing the scope of the draft work plan addendum for the investigation we have offered to undertake in January. HP and Varian put together an addendum that proactively addresses each of the primary concerns that were discussed in the in-person meeting with Superfund Division Director Enrique Manzanilla. We understood from that meeting that EPA is open to a "phased approach," which to us meant that the actual data gathered in Palo Alto would be evaluated to determine whether additional phases are necessary in Palo Alto. If all of the work that was suggested by Melanie will be required by EPA before it will sign off on this investigation, regardless of the results that are gathered over time, we need to understand that now. We are concerned that this whole new package of requirements will be unnecessarily disruptive to the citizens of our community, and that it is not based on existing guidance or a science-based approach based on the data.

As we said, we will consider what we heard from your team, and get back to you promptly when we are able to reconvene after the Thanksgiving holiday break. Informal written comments from Melanie on our draft work plan addendum would be welcome in the interim. We hope that, in the meantime, EPA also will consider that HP and Varian have proposed a path forward in our work plan addendum that would allow EPA's questions about cold weather variability to be answered for Palo Alto early next year.

Best wishes to you and your families for the holidays.

Respectfully,

Chris

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